Corporate Franchise and Income Taxes --

Apportionment of Business Income in Utah

Basic Principle

- A state may tax its "fair share" of profits earned from activities within the state

- In general terms, "business income" is income arising from transactions and activity in the regular course of a taxpayer's trade or business

Traditional Rules

- Three factor formula: property, payroll, and sales

- Fraction calculated for each factor

- Fraction compares property, payroll, and sales in the state to the taxpayer's property, payroll, and sales everywhere

  Example:

  $$\frac{\text{Property in Utah}}{\text{Taxpayer total property}}$$

- Factors weighted equally

Modern Trend

- State trend to more heavily weight sales factor

- Double weighting sales factor

- Triple or greater weighting of sales factor, such as single sales factor apportionment

  Example:

$$\frac{\text{Sales in Utah}}{1}$$

- Industry specific rules

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(Niederhauser)

- Enacted current apportionment structure
- Hinges on whether taxpayer is "sales tax factor weighted taxpayer"
- A taxpayer is a sales factor weighted taxpayer unless more than 50% of the taxpayer's economic activities fall within NAICS codes under:
  - Mining (Sector 21)
  - Natural gas distribution (Industry Group 2212)
  - Manufacturing (Sectors 31-33)
  - Transportation and warehousing (Sectors 48-49)
  - Information (Sector 51 except for Subsector 519)
  - Finance and insurance (Sector 52)

Sales Factor Weighted Taxpayers

- Required to use single sales factor apportionment

  Example:

$$\frac{\text{Sales in Utah}}{1}$$

- Formula phased in beginning with taxable year 2010 with full phase in effective in 2013

Taxpayers Except for Sales Factor Weighted Taxpayers

- May elect to use equally weighted three factor formula or to double weight the sales factor
- Election may be made each taxable year

Potential Committee Action

- Substantive changes = Policy decision for the committee
- Potential technical changes:
  - Obsolete language as a result of phase in
  - Committee may wish to consider whether to draft legislation to clean up obsolete language and simplify and clarify the code section